

Property of the Estate
Payment at employment termination

Roger and Cynthia George, Case No. 04-65572-fra7

6/1/2006 FRA

Unpublished

The Debtor was advised by her employer that her employment of 16 years would be terminated. An agreement was reached whereby the Debtor would receive a payment of 10 months salary in exchange for Debtor's release and discharge of the employer from any claims or liabilities relating to the termination of employment. The employer paid to Debtor the sum of \$93,000 on December 12, 2005 and it was deposited by the Debtor into a new bank account. Debtors had filed bankruptcy under chapter 11 on July 14, 2004 and the case was thereafter converted to one under chapter 7 on December 30, 2005.

The chapter 7 trustee sought turnover of the funds as property of the estate. Property of the estate is defined at Code § 541 as all assets or property owned by the debtor as of the commencement of the case, as well as "[p]roceeds,. . . of or from property of the estate, except such as are earnings from services performed by an individual debtor after commencement of the case."

As the payment was arrived at because of the Debtor's long service with her employer, the court held that it was sufficiently rooted in the pre-bankruptcy past to constitute property of the estate. While the debtors argued that the payment was intended as compensation for the loss of income due to the termination of employment, the court held that the text of the agreement made it clear that the payment was for a general release of liability. As there was no evidence that the payment was for loss of future earnings, Debtor is not entitled to an exemption under ORS 18.345(1) (1).

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9 UNITED STATES BANKRUPTCY COURT
10 FOR THE DISTRICT OF OREGON
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12 In re:)
13 Roger H. George, and) Bankruptcy Case No. 04-65572-fra7
14 Cynthia T. George,)
15 _____ Debtors.) OPINION

16 The Debtors filed a petition for relief under Chapter 11 of the
17 Bankruptcy Code on July 14, 2004. The case was converted to one under
18 Chapter 7 on December 30, 2005.

19 The Trustee asserts that she is entitled to possession of
20 \$93,000 paid to Debtor Cynthia George upon termination of her employment
21 in November 2005. The Debtors allege that the funds are not property of
22 the estate and, further, that to the extent the funds are estate property
23 they are exempt under ORS 18.345(1)(1). I find that the funds are
24 property of the estate, but not subject to any exemption.

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1 I. FACTS

2 After 16 years employment at a department store in Medford,
3 Oregon, Debtor Cynthia George was advised that her employment was to be
4 terminated. Negotiations ensued for some sort of severance package. The
5 employer originally offered compensation in an amount equal to three
6 months' pay, and Mrs. George countered with a demand for 18 months. The
7 parties ultimately settled on an amount equal to 10 months salary, or
8 \$93,000. A written agreement was entered into whereby the employer
9 agreed to pay this sum, and the Debtor agreed to waive any claim of any
10 sort that she may have had against the employer. The agreement provided
11 that:

12 1. Your [i.e. Cindy George's] last day of active
13 employment was October 18, 2005 (the "resignation
14 date"). You agree that you resigned as an employee as
15 of the resignation date. The employer-employee
16 relationship shall cease on the resignation date for
all purposes, including without limitation for
purposes of all employee benefit plans and all fringe
benefit arrangements provided by [employer].

17 The sum of \$93,000 was paid by the employer and deposited by
18 Debtors in a new bank account on December 12, 2005. The receipt of the
19 funds and the creation of the account were not disclosed in reports
20 subsequently submitted to the Court pursuant to Fed.R.Bankr.P. 2015, or
21 otherwise disclosed to the Court, U. S. Trustee, or interested parties.
22 As noted, the Debtors converted their case to Chapter 7 eighteen days
23 later.

24 II. DISCUSSION

25 Code Section 541 provides that all assets or property owned by
26 the debtors as of the commencement of the case become property of the

1 estate. Section 541(a)(6) further provides that "[p]roceeds, product,
2 offspring, rent or profits of or from property of the estate, except such
3 as are earnings from services performed by an individual debtor after
4 commencement of the case" are property of the estate.

5 According to the terms of the Agreement and General Release, the
6 consideration given by the Debtor in return for the cash payment was a
7 complete release and discharge of the employer from any claims or
8 liabilities. While no particular claim is alluded to (much less
9 admitted), the agreement appears intended more as a resolution of any
10 tort claim arising out of the termination than an adjustment based on
11 earnings. Any such a claim was, at the time, property of the estate, it
12 follows that the cash paid by the employer is proceeds from the
13 disposition of those estate assets, and is therefore itself property of
14 the estate. § 541(a)(6). See In re Powers, 98 B.R. 577 (Bankr. M. D.
15 Fla. 1989). Since it was not attributable to services actually performed
16 by Mrs. George after the case was commenced, it is not subject to the
17 exception set out in § 541(a)(6). Moreover, the termination occurred
18 after sixteen years of employment, and fifteen months after the case was
19 commenced. Nothing in the record suggests that the agreement is based,
20 even in part, on events or circumstances arising after the bankruptcy
21 commenced. It is plain to see that the sizable settlement was arrived at
22 because of Mrs. George's long service with the employer. The agreement
23 was, therefore, sufficiently rooted in the pre-bankruptcy past to
24 constitute property of the estate. In re Reyerson, 739 F. 2d 1423 (9th
25 Cir, 1984).

26 Debtors suggest that the money paid under the agreement is, at

1 least in part, intended as compensation for the loss of income from the
2 terminated employment. However, the text of the agreement does not
3 support this argument. The agreement provides that the employer will pay
4 the *equivalent* of ten months of Mrs. George's annual salary. There is no
5 other reference to salary in the agreement. The agreement states that

6 it is expressly understood that there is no agreement
7 or understanding between [debtor] and [employer] about
8 or pertaining to the termination of your employment,
9 [employer] or [employer's] obligations to you with
10 respect to such termination, except as set forth in
11 this agreement. No alteration, amendment, modification
12 or interpretation of this agreement shall be binding
13 unless in writing and signed by both parties.

14 It is clear from testimony that the negotiations between the
15 Debtor and the employer were couched in terms of multiples of the
16 Debtor's \$9,300 monthly gross salary. The use of this method of
17 negotiation and evaluation of the consideration to be paid does not
18 necessarily mean that the consideration is in fact a substitute for
19 actual salary. The terms of the agreement say precisely the opposite:
20 the consideration for the cash payment, however the amount is arrived at,
21 is the general release, and nothing else.

22 Debtors claim that the funds are, even if property of the
23 estate, subject to exemption.¹ ORS 18.345(1)(1) provides for an
24 exemption in the debtor's right to receive payment for compensation of
25 loss of future earnings. As noted previously, the consideration paid by
26 the employer was not for future earnings, but for the release of claims.

¹ It does not appear that the exemption was claimed in the Debtors' Schedule C: however, the parties have presented evidence and argument on the issue as if it had been, and a timely objection filed by the trustee.

1 It may be that such claims included claims for future earnings
2 attributable to wrongful termination. However, the Court is not
3 prepared to speculate on this point. The record supports a finding that
4 the money was paid in return for a release of all claims, whatever they
5 may have been. The evidence is not sufficient to fashion findings that
6 the money, or a particular portion, was attributable to a loss of future
7 earnings and therefore subject to the provisions of ORS 18.345(1)(1).

8 The proceeds of the Agreement and General Release are property
9 of the estate. Debtors' objection to the Trustee's motion for an order
10 requiring turnover of the funds must be overruled. An order to that
11 effect will be entered.

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15 FRANK R. ALLEY, III
16 Bankruptcy Judge
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